APPENDIX A

IN THE UNITED STATES COURT OF CLAIMS

No. 190-54

(Decided January 15, 1958)

ALASKA STEAMSHIP COMPANY v. THE UNITED STATES

Mr. J. Franklin Fort, for the plaintiff. *Messrs. Kominers & Fort* were on the briefs.

Mr. Justin S. Colin, with whom was *Mr. Assistant Attorney General George Cochran Doub*, for the defendant. *Mr. Stephen C. Bransdorfer* was on the briefs.

ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

MADDEN, *Judge*, delivered the opinion of the court:

The plaintiff, a corporation of the State of Washington, seeks to recover $53,862 plus any interest allowable thereon, which it claims the defendant, acting through the Maritime Commission and later the Maritime Administration, overcharged it for the purchase of a vessel.

The plaintiff, on July 16, 1948, purchased a standard C1-M-AV1 type dry-cargo vessel called the *Terminal Knot* from the Maritime Commission under the Merchant Ship Sales Act of 1946, 60 Stat. 41, 50 U. S. C. App. 1735 *et seq.* We have had occasion to consider this statute in a number of cases. See *A. H. Bull Steamship Co.* v. *United States*, 123 C. Cls. 520; *Southeastern Oil Florida, Inc.* v. *United States*, 127 C. Cls. 409; and two cases this day decided, *Nautilus Shipping Corporation* v. *United States*, Nos. 143-53, 112-55,

279-56, and *Milton C. Jackson, Syndicate Manager* v. *United States; Southern Trading Company, by Milton C. Jackson, Receiver* v. *United States*, Nos. 389-55, 261-57. The Act provided for the sale of the Government's merchant ships, acquired for war purposes, to private owners. It set formulas by which sale prices could be determined without, or with a minimum of haggling between the Maritime Commission, which was the Government's sales agency, and the purchaser.

In the drafting of this statute, Congress recognized that the pre-war cost of building a dry-cargo ship in an American yard was about twice the cost in a foreign yard. If ships could be sold at all at American prices, the purchaser would be saddled with a capital investment which would handicap him in his operation in competition with foreign built ships. Section 3 (d) of the Act provided that the "statutory sales price" of dry-cargo ships should be 50% of the pre-war domestic cost of that type of ship. In subsections 1 to 4, it provided for further deductions, in proper cases, from that 50% price. These deductions were for the cost of putting the vessels in class, for the lack of desirable features standard to that type of vessel, and for depreciation. It was recognized that the allowable deductions, particularly the deduction for depreciation, might carry the sales price very low and thus induce purchasers to select the older ships with the greatest depreciation. The Government, however, wanted to get the newer and better ships into private operation in order to build up a reputable American merchant fleet. For this reason, and for the further reason that there were members of Congress who feared that the whole sales program might be something of a giveaway, considering that the actual cost of building ships during the war was greater than the pre-war cost on which the 50% figure was based, a floor or absolute minimum sales price was set. Section 3 (d), in its last paragraph, provides that no adjustment should be made which would

carry the sales price below, in the case of dry-cargo vessels, 35% of the domestic war cost of such vessels.

In the consideration in Congress of this floor price provision, the discussion assumed that, in all cases, the 35% of domestic war cost would be lower than the 50% pre-war domestic cost, unless that 50% figure was reduced by class allowances, desirable feature allowances or depreciation. If such adjustments would have carried the price below the 35% floor, they would not be allowed to do so. The reduction process would have to stop at the floor.

In the instant case, because of the unusually high cost of building ships of the type in question late in the war period, 35% of the domestic war cost of the ship was $53,862 more than 50% of the pre-war domestic cost. That meant, of course, that no reduction could be taken for class allowances, absence of standard desirable features, or depreciation, and the plaintiff does not claim any such reduction. But the plaintiff does claim that it could not be required, under the statute, to pay more than 50% of the pre-war domestic cost prescribed in section 3 (d). Stated graphically, the plaintiff says that it was entitled to buy the ship for less than the floor price.

There are things to be said for the plaintiff's position. In the discussion of the bill which resulted in the Merchant Ship Sales Act, there was emphasis upon the purpose, noted above, not to require American enterprises to make a capital investment in their ships which would handicap them in their competition with foreign companies. H. Rept. No. 831, 79th Cong., 1st Sess., pp. 4-7. The 50% of pre-war domestic cost figure was regarded as the measure of the investment of foreign companies. If Americans were required to pay more than that 50%, that policy would, to that extent, be violated. In the discussion of the bill, the intent was expressed that the extraordinary costs of shipbuilding during the war should not be saddled upon the

post war merchant marine, but should be borne by the Government. S. Rept. 807, 79th Cong., 1st Sess., pp. 23.

In the text of section 3 (d), we have the general statement of the "statutory sales price" of 50% and then the statement "such amount in each case being adjusted as follows: * * *." Then we have the three provisions for reductions from the 50% figure, *viz.*, for class allowances, absence of standard desirable features, and depreciation. Then we have the statement "No adjustment * * * shall be made under this Act which will result" in a sales price of less than 35% of the domestic war cost. The word "adjustment" last quoted would seem to have reference to those items covered by the immediately preceding paragraphs, which were introduced by the phrase "adjusted as follows."

Section 4 of the Act says that the Maritime Commission shall sell ships to any citizens who are properly qualified "at the statutory sales price." This obviously does not refer to the 50% figure, though in section 3 that is called the "statutory sales price," because farther on in section 3 are the provisions for the adjustments which are mandatory and which will reduce, or, in one instance not here relevant, increase the 50% figure, and the provision for the 35% floor figure. The "statutory sales prices" referred to in section 4 must be the price which will be arrived at by applying the provisions of the statute. It is thus of no help to us in determining what the statute means.

When members of Congress were disturbed because it seemed that ships built at great cost during the war were about to be sold for a minor fraction of their cost, the floor price, based upon that actual war cost, was inserted in the bill to reassure them. As we have said, it was assumed in the discussion that this floor price would always be a stopping place in the process of reduction from a higher starting point, and the possibility that the floor as an obstruction to descent might be avoided by starting below the floor did not occur to them.

In the circumstances, the text of the statute not giving a clear answer, and there being no Congressional intent pointed at the particular problem, the best we can do is to determine, as best we can, what Congress would have intended if it had put its mind to the problem. Our conclusion is that it would have intended that ships should not be sold at less than the floor price.

When the members of Congress were discussing the financial misfortune which the Government was suffering in selling ships for approximately one third of what the Government had paid for them a year or two before, we feel reasonably sure that a member who foresaw the instant case and reminded his colleagues that perhaps in some cases the ships would be sold for even less than this one third of the cost, would have received little support from his colleagues. We think they would have made it plain that this should not happen, although by doing so they would have been, to a degree, departing from some of the policies of the Act.

Shortly after the Act was passed, situations involving the question which concerns us here began to come to light. When the House of Representatives passed the Act, it set up a special subcommittee to observe the administration and operation of the Act. At the committee's first hearing, it was informed that the floor prices of three types of vessels, including the type involved in this case, would exceed 50% of the pre-war domestic cost, i.e., the unadjusted statutory sales price. See Watchdog Committee Hearings, April 5, 6, 1946, pp. 1-2. The subcommittee did not question the propriety of these prices. On the contrary, it approved the Commission's proposal to raise the floor price by including certain additional items in computing the domestic war cost of the vessels. *Id.*, p. 22.

At the subcommittee's next hearing it considered the advisability of an amendment to the Act which would permit the Commission to sell these types of vessels at less than the

floor price. Watchdog Committee Hearings, June 4, 1946, pp. 6-7. The committee requested and obtained the views of the Commission, which were adverse to the amendment. No action was taken on the proposed amendment.

The Government cites other actions by the Watchdog Committee and by Congress which show that both were aware that the Commission was adhering to the floor price even when it was higher than the unadjusted statutory sales price. We think that this post-enactment legislative history is of considerable weight in showing what Congress intended, or what it would have intended, if it had, at the time of enactment of the Merchant Ship Sales Act, been aware of the problem.

Our conclusion is that the plaintiff was not overcharged for its ship. The defendant's motion for a summary judgment is granted, and the plaintiff's petition is dismissed.

It is so ordered.

WHITAKER, *Judge*; LITTLETON, *Judge*; and JONES, *Chief Judge* concur.

LARAMORE, *Judge*, took no part in the consideration and decision of this case.

IN THE UNITED STATES COURT OF CLAIMS

No. 190-54

ALASKA STEAMSHIP COMPANY v. THE UNITED STATES

Order

This case comes before the court on plaintiff's motion filed February 14, 1958, for rehearing, together with defendant's response thereto. Upon consideration thereof,

IT IS ORDERED this seventh day of May, 1958, that plaintiff's motion for rehearing be and the same is denied, and

IT IS FURTHER ORDERED that the first two paragraphs appearing on the last page of the slip opinion of January 15, 1958, be and the same are deleted in their entirety and the following substituted in their place:

> Shortly after the Act was passed, situations involving the question which concerns us here began to come to light. When the House of Representatives passed the Act, it set up a special subcommittee to observe the administration and operation of the Act. See Watchdog Committee Hearings, April 5, 6, 1946, pp. 1-2. At the committee's first hearing, a chart was presented which showed the domestic war cost and floor prices of three types of vessels, including the type involved in this case, and these floor prices were higher than the unadjusted statutory sales prices which had on several occasions been reported to Congress. *Id.*, p. 22. The subcommittee did not question the propriety of these prices. On the contrary, it

approved the Commission's proposal to raise the floor price by including certain additional items in computing the domestic war cost of the vessels. *Id.*, p. 22.

At the subcommittee's next hearing it considered the advisability of an amendment to the Act which would permit the Commission to sell these types of vessels at less than the floor price. Watchdog Committee Hearings, June 4, 1946, pp. 6-7. The committee requested and obtained the views of the Commission, which were adverse to the proposal to amend. No action was taken on the proposal.

By the Court

Marvin Jones,
Chief Judge.

APPENDIX B

Relevant Provisions of the Merchant Ship Sales Act of 1946

60 Stat. 41; 50 U.S.C. App. 1735 *et seq.*

Definitions

Sec. 3. As used in this Act the term—

(a) 'Commission' means the United States Maritime Commission.

(b) 'War-built vessel' means an ocean-going vessel of one thousand five hundred gross tons or more, owned by the United States and suitable for commercial use—

(1) which was constructed or contracted for by or for the account of the United States during the period, beginning January 1, 1941, and ending with September 2, 1945; or

(2) which, having been constructed during the period beginning September 3, 1939, and ending with September 2, 1945, was acquired by the United States during such period.

(c) 'Prewar domestic cost', as applied to any type of vessel, means the amount determined by the Commission, and published by the Commission in the Federal Register, to be the amount for which a standard vessel of such type could have been constructed (without its national defense features) in the United States under normal conditions relating to labor, materials, and other elements of cost, obtaining on or about January 1, 1941. In no case shall the prewar domestic cost of any type of vessel be considered to be greater than 80 per centum of the domestic war cost of vessels of the same type.

(d) 'Statutory sales price', as applied to a particular vessel, means, in the case of a dry-cargo vessel, an amount equal to 50 per centum of the prewar domestic cost of that type of vessel, and in the case of a tanker, such term means an amount equal to 87½ per centum of the prewar domestic cost of a tanker of that type, such amount in each case being adjusted as follows:

(1) If the Commission is of the opinion that the vessel is not in class, there shall be subtracted the amount estimated by the Commission as the cost of putting the vessel in class.

(2) If the Commission is of the opinion that the vessel lacks desirable features which are incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be lower if the standard vessel had also lacked such features, there shall be subtracted the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(3) If the Commission is of the opinion that the vessel contains desirable features which are not incorporated in

the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be higher if the standard vessel had also contained such features, there shall be added the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(4) There shall be subtracted, as representing normal depreciation, an amount computed by applying to the statutory sales price (determined without regard to this paragraph) the rate of 5 per centum per annum for the period beginning with the date of the original delivery of the vessel by its builder and ending with the date of sale or charter to the applicant in question, and there shall also be subtracted an amount computed by applying to the statutory sales price (determined without regard to this paragraph) such rate not in excess of 3 per centum per annum in the case of a vessel other than a tanker, and not in excess of 4 per centum per annum in the case of a tanker, for such period or periods of war service as the Commission determines will make reasonable allowance for excessive wear and tear by reason of war service which cannot be or has not been otherwise compensated for under this subsection.

No adjustment, except in respect of passenger vessels constructed before January 1, 1941, shall be made under this Act which will result in a statutory sales price which (1) in the case of dry-cargo vessels (except Liberty type vessels) will be less than 35 per centum of the domestic war cost of vessels of the same type, (2) in the case of any Liberty type vessel will be less than 31½ per centum of the domestic war cost of vessels of such type, or (3) in the case of a tanker will be less than 50 per centum of the domestic war cost of tankers of the same type. For the purposes of this Act, except section 5, all Liberty vessels shall be considered to be vessels of one and the same type.

(e) 'Domestic war cost' as applied to any type of vessel means the average construction cost (without national defense features) as determined by the Commission, of vessels of such type delivered during the calendar year 1944, except in case of any type of vessel the principal deliveries of which were made after the calendar year 1944, there shall be used in lieu of such year 1944 such period of not less than six consecutive calendar months as the Commission shall find to be most representative of war production costs of such type.

* * * * * *

SALES OF WAR-BUILT VESSELS TO CITIZENS

SEC. 4. (a) Any citizen of the United States may make application to the Commission to purchase a war-built vessel, under the jurisdiction and control of the Commission, at the statutory sales price. If the Commission determines that the applicant possesses the ability, experience, financial resources, and other qualifications, necessary to enable him to operate and maintain the vessel under normal competitive conditions, and that such sale will aid in carrying out the policies of this Act, the Commission shall sell such vessel to the applicant at the statutory sales price.